IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 27 OF 2001

Lt.Col.Sharadchadnra Shankarrao Patil
age 32 years, residing at
Plot No.29 Ramaanand Nagar, Kolhapur
At present Adjustant/Q.M.no.1
Military Reformatory Trimulghery
Prison No.1,Secunderabad AP ...Appellant

V/s

Sou.Manik Sharadchadnra Patil
age 31 years, Occ. household and
Tutor, residing at 411,
Shukrawar Peth, Pune-2 .. Respondent

AND

CROSS OBJECTION NO.(ST) No.34883 OF 2001

IN

FAMILY COURT APPEAL NO. 27 of 2001 +

Shri Sharadachandra Shankarrao Patil
age 32 years, residing at Plot No.29,
Ramanand Nagar, Kolhapur
at present adjutant/Q.M.No.1
Military Reformatory Trimulghery
Prison No.1,Secunderabad, A.P. ..Appellant

V/s

Sou. Manik Sharadchandra Patil,
age 31 years,
Occ. household and Tutor
residing at 411, Shukrawar Peth,
Pune-2 ... Respondent

Shri Ajit Kulkarni for the Appellant
Shri S.S.Kulkarni for Respondent

CORAM:S.B.MHASE AND
S.R.SATHE,JJ.
DATED:28th Sept. 2006

ORAL JUDGMENT :- (Per S.R.SATHE,J.)

1. The Appellant-husband the original Petitioner in PA No.663/1999, (initially numbered as HM 128/991) filed in the Court of the Civil Judge, Senior Division, Kolhapur has preferred this appeal against the judgment and order passed by the Judge, Family Court, Pune whereby his

petition for divorce filed against respondent wife on the ground of cruelty, desertion and that Respondent wife is suffering from mental disorder was dismissed. For the sake of convenience hereafter the parties shall be referred to as the Petitioner and Respondent.

2. Brief facts giving rise to this appeal are as under:-

. The marriage between the Petitioner and Respondent took place as per Hindu Vedic Rites on 15-4-1985. At that time Petitioner was serving as Captain in Indian Army while Respondent had passed M.Sc. (Zoology) in First Class and was doing M.Phil. It was arranged marriage. It is the Petitioner's case that few days after marriage, the Respondent herself told him that she had no desire to marry with the Petitioner but her family members compelled her to do so. It is his case that as a result of the same Respondent used to hate her and behave in abnormal and adamant manner. She was not allowing him to have sexual intercourse with her and was not prepared to undertake any liability. Time and again Petitioner persuaded her to behave properly but all efforts proved to be futile. She often used to pick up quarrels and demand money, even when she used to take all salary of the Petitioner. She was insisting that the Petitioner should not meet his parents and go to his native place at Kolhapur. As a result of all this Petitioner lost his family life and peace of mind.

3. According to the Petitioner the Respondent was suffering from psychological disorder. Even prior to marriage she had such attacks and during the period of such attacks she used to lose her control and behave improperly. In fact nobody had disclosed this fact to the Petitioner prior to marriage, but when Respondent had such attack after marriage she explained to the Petitioner that since many years she was having mental sickness and for that she had even taken medical treatment. Though Petitioner took all care to continue the medical treatment the mental attacks could not be controlled. According to him in January 1989 Respondent damaged two wall clocks. On 15-1-1991, she broke tube and colour T.V.. She also spoiled the refrigerator. Whenever she used to get such mental attack she used to tore her clothes and at times used to run away out of the house. It is petitioner's case that as a result of such behaviour he apprehended danger to his life and it became impossible for him to reside with the Respondent. The Respondent used to dictate the terms to the Petitioner and he had to obey in order to avoid complications. On one such occasion she compelled him to sign an agreement dated 4-12-1986, whereby he was forced to give his entire salary to her as Respondent used to behave in indecent manner the Petitioner was unable to have any social life among other officers and he could not invite them to his house.

4. On 29-3-1991 the Respondent delivered a son who is named as Kedar. According to the Petitioner, Respondent was not taking proper care of son Kedar. He therefore took Respondent along with Kedar to Kolhapur in the month of May-June 1991. However, Respondent was not willing to reside at Kolhapur. She, therefore, called her relatives on 28-6-1991. She even filed false Police complaint in Karveer Police Station, Kolhapur. Thus according to the Petitioner the Respondent purposely defamed him and his family members. She expressed her desire to brake the marital tie and take divorce from the Petitioner. Hence on all these grounds the Petitioner filed Marriage Petition for divorce in the Court of Civil Judge, Senior Division, Kolhapur.

5. In the year 1988 i.e. after the above mentioned petition was transferred to the Family Court, Pune, Petitioner amended the petition and averred that one month after their marriage Respondent herself had told him that she had no desire to marry with the Petitioner. She had even purchased a bottle of poison a day before the marriage. However, when Respondent’s mother learnt about the same she took away the said bottle. Similarly, the Petitioner alleged that the Respondent informed her that even prior to marriage she was suffering from psychological disorder and for that she had taken treatment from Dr.Vidyadhar G. Watve. Even in the year

1985-86 on 7/8 occasions the Respondent had become violent and uncontrolable and in that process had scratched the petitioner's face with her finger nails. According to the Petitioner on 18-12-1988 when he and Respondent were residing at Morarji Gokuldas Sanitarium, Respondent broke audio cassettes, Petitioner's diary in which he had written his experiences at Siyachin. On one day the Respondent coolly told him that she had affair with one Captain Sanjiv Kapoor, a colleague of the Petitioner. When the Petitioner told the Respondent that this is highly improper she assured that she will not indulge in such affair again. In spite of the said assurance the Respondent went ahead and wrote a letter to Capt. Sanjiv Kapoor. However the said person being colleague of the Petitioner he handed over the said letter to the Petitioner. However by such conduct of the Respondent, Petitioner was humiliated and that caused great mental torture to the Petitioner. It is also alleged that on 28-6-1991 Respondent's relatives came to the Petitioner's house and made serious allegations against the Petitioner and took the Respondent with them and lodged a complaint with Police. When the Police recorded the statement of the Respondent expressed that she had no desire to stay with the Petitioner. The Petitioner, therefore, submitted that he had no alternative but to take divorce.

6. The Respondent wife filed written statement at Exh.13

and additional written statement at Exh.43 and admitted that she is the legally wedded wife of the Petitioner and out of the said wedlock they have a son by name Kedar. She however, denied all other allegations made against her by the Petitioner and contended that she had never expressed desire to have divorce. On the contrary she was all along ready and willing to cohabit with the Petitioner. She further contended that after marriage they stayed together for 5/6 days at Petitioner's house at Kolhapur and thereafter she stayed with the Petitioner at various places like Gangatok, Siyachin and other places wherever he was posted. However, at that time she noticed that the Petitioner was addicted to drinking and was not providing money even for her undergarments and other necessary things. On the contrary, he often used to beat her. He was of a very hot temperament. As the Petitioner was required to vacate the quarter at Siyachin she was sent to her maiden home at Pune and at that time Petitioner wrote letters to her and expressed repentance for the treatment given by him to her.

7. The Respondent further contended that when the Petitioner was not having official quarter she was residing at Kolhapur along with parents of the Petitioner but they also used to ill-treat and beat her. When she made complaint about the same to the Petitioner he sent her to her maiden home. The Petitioner however did not send any money for her maintenance. When Petitioner

acquired residential accommodation at his place of posting he again went to Pune to take Respondent and at that time the parents of the Respondent told the Petitioner that he should give proper treatment to her. It is her contention that when she was residing with the Petitioner at Kanpur there was no improvement in the Petitioner's behaviour. After Siyachin, they were residing together at Dehradun for 3-4 months. When they were residing at Secunderabad for a period of about 2 years, during that period she was pregnant and finally she delivered a son on 29-3-1991. In April 1991 when the Petitioner and Respondent were residing at Kolhapur the Petitioner was harassing her. When her relatives came to Kolhapur, the Petitioner even did not allow them to see the Respondent. Ultimately on 28-6-1991 the Respondent's mother, uncle, sister and brother went to Kolhapur and with the help of Col. Shri Gaikwad contacted the Superintendent of Police, Kolhapur and then they went to the house of Petitioner and then Respondent's brother even lodged a complaint about the ill-treatment and beating given by the Petitioner.

8. The Respondent also contended that she was never suffering from any mental disorder and was not treated for the same in any hospital. On the contrary, though the Petitioner was often harassing her and ill-treating her it was her genuine desire to cohabit with him and as such she did not file any complaint against him with

Police. On the contrary, she often used to write letters to him and ask him to take her with him at his place of posting. She also denied the allegation that the Petitioner came to know from her that she was not ready for marriage and that she told him that one day before marriage, she had purchased bottle of poison etc.

9. She also contended that the Petitioner made such statements and only after the period of about 7 years after filing of the application and that itself shows that the same are not true. According to her she was having excellent academic career and had even worked as Senior Research Fellow in Pune Division for about 2 and half years. However, as the Petitioner is only B.Sc he is not prepared to accept the position that his wife is highly educated and intelligent and hence he has tried to show that the Respondent is suffering from mental disorder. She also denied the allegation that she had any love affair with Sanjiv Kapoor. According to her out of 24 hours about 15/16 hours the Petitioner used to be under influence of alcohol and naturally on that count there used to be some quarrel between Petitioner and her. She further contended that as the Petitioner was ill-treating her he executed an agreement dated 4-12-1986 and agreed that he would not ill-treat and would provide sufficient money for her. According to her when they were residing at Morarji Gokuldas Sanitarium, under

influence of alcohol, the Petitioner used to ask her to do unwarranted things and when she used to refuse, the Petitioner used to beat her. According to her the Petitioner also used to give threat that she should give divorce.

10. The Respondent also contended that she was not at all knowing any person by name Capt. Sanjiv Kapoor nor she was aware that Petitioner was having any such colleague. She had no love affair with Capt. Sanjiv Kapoor nor she had written any letter to him. According to her after beating her the Petitioner used to get the things done as per his wish by taking undue advantage of her patience and tolerance. She therefore contended that the said allegations are false and baseless and that when such allegation was made the Petitioner ought to have joined the Capt. Sanjiv Kapoor as a party to the present application. Thus, the Respondent denied all the allegations made against he and contended that even now she is ready and willing to cohabit with the Petitioner and as the allegations made by the Petitioner are false the petition be dismissed.

11. On the above pleadings the learned trial Judge framed issues at Exh.28. In order to prove his case the Petitioner husband examined himself at Exh.67 and witness Dr.Watve at Exh.101, Col. Radhakrishnan Exh.116 and Ramchandra Arjunrao Sathe, Exh.118. He also produced

certain documents. As against this the Respondent wife examined herself at Exh.126 and also produced certain documents. After considering the evidence adduced by the parties the learned trial Judge came to the conclusion that the Petitioner husband has failed to prove the allegations of cruelty and has also failed to establish that the Respondent wife was/is suffering from incurable mental disorder. It is also not proved that the Respondent deserted the Petitioner. Naturally, the learned trial Judge dismissed the petition for divorce filed by the husband.

12. Being aggrieved by the said judgment and order the Petitioner husband has filed the present appeal.

13. In this appeal before us Shri Ajit Kulkarni, learned Advocate for the Petitioner has urged only three points. Firstly, he submitted that the learned trial Judge has not properly appreciated the evidence on record and has wrongly disbelieved the evidence of Dr.Vidhyadhar Watve, Exh.101. Secondly, he canvased before us that evidence of Col. Radhakrishnan Exh.116 was sufficient to believe the case of cruelty and improper behaviour of the Respondent. He also submitted that the letter written by Respondent to Sanjiv Kapoor produced at Exh.69 is sufficient to grant decree for divorce. Lastly, he submitted that Respondent has made false and baseless allegations in the written statement that the Petitioner

was addicted to drinking and used to be under influence of alcohol for about 15/16 hours a day. So, such allegations amount to causing mental torture and cruelty. He therefore submitted that appeal be allowed and decree for divorce be passed. As against this Shri S.S.kulkarni, learned Advocate for the Respondent supported the judgment and order passed by the learned trial Judge.

14. It is not in dispute that marriage of the Petitioner and Respondent took place on 15-4-1985 and thereafter both of them resided together at various places such as Gangatok, Madras, Kanpur, Shachal where the petitioner was posted. Admittedly, at times both of them stayed together at Petitioner's house at Kolhapur and some times even at Pune. It is also admitted that out of the said wedlock they have a son by name Kedar. His birth date is 29-3-1991, At that time Petitioner and Respondent were residing at Sicunderbad. From perusal of the petition it is very clear that the Petitioner is seeking divorce on the grounds mentioned in Section 13(1)(ia)(ib) and (iii) of the Hindu Marriage Act, 1955. According to the Petitioner the Respondent caused mental as well as physical cruelty to him. However, though the Petitioner has stated that Respondent often used to pick up quarrels or used to behave in indecent manner, he has not given any details about the same. Besides this, there is no other corroborative evidence either oral or

circumstantial to support the Petitioner’s allegations in that behalf. Mere vague statements that Respondent wife often used to pick up quarrel and demand money or that she was not attending household duties or not taking proper care of minor son are very vague and the same cannot be treated as an act of cruelty as contemplated under Section 13(i)(ia) of Hindu Marriage Act. On the contrary we find that Respondent has alleged that the Petitioner was not treating her well, he often used to beat her. He was not providing sufficient money even to purchase her undergarments or other things required for day to day life. According to her, when she was residing with her in-laws at Kolhapur there also she was not treated well by them. So, as a result of all this, she was in fact having a grudge against the Petitioner and her parents and uncle had also tried to give understanding in that behalf to the Petitioner. According to her it is under these circumstances the agreement dated 4-12-1986 Exh.68 was executed.

15. The bear reading of the said agreement Exh.68 is sufficient to hold that there was a some dispute between Petitioner and Respondent. However, the main and material question is, what was the cause for the said dispute, who was responsible for the same. In the agreement exh.68 there is a stipulation "There shall be no physical violence of any kind under any circumstances". So, this stipulation in fact does not

make it clear as to who was in fact causing physical violence. However, from the circumstances of the case and the evidence on record it can be said that there was physical violence at the hands of the Petitioner. In this agreement the Petitioner has also agreed that he would be giving his salary to the Respondent. He has also authorised her to operate the Bank account. This obviously shows that there was dispute between the Petitioner and Respondent on account of causing violence and not providing sufficient money to Respondent and that is why the Petitioner even executed the agreement in question. It is really difficult to believe that a person like Petitioner who is high ranking officer in Army would sign such agreement. If really there would not have been any truth or substance in the same or there was no valid reason for executing such agreement. It must also be noted that in that agreement it is nowhere mentioned that the Petitioner should not visit Kolhapur and meet his parents. So, the allegations made by the Petitioner that the Respondent was preventing him from meeting his parent is not at all true and correct. On the contrary, we find that even after execution of the agreement in question the Respondent had also gone to Kolhapur and resided with the parents of the Petitioner. So, we are not inclined to accept the allegations made by the petitioner in this behalf. . Petitioner has stated that the Respondent once poured oil in his eyes. We cannot ignore the fact that the Petitioner is quite

strong, healthy army officer. So it is difficult to believe that his wife would be in a position to do such overt acts against the Petitioner. If any attempt was made by the wife for doing such act, then certainly the Petitioner was in a position to over power her. So, we are not inclined to believe the petitioner's version in this behalf. The Petitioner has also stated that at times the Respondent even used to scratch his face with her finger nails. This is also difficult to believe. Though he has tried to say that Respondent was behaving in indecent manner, even his own witness viz. Capt. Radhakrishnan Exh.116 has not stated so. The Petitioner's own witness Mr.Sathe Exh.118 has in fact fully supported the case of respondent. So, the learned trial Judge has rightly held that the Petitioner has failed to prove the above mentioned alleged acts of cruelty.

16. The main point which is stressed before us by the learned Advocate for the Petitioner is that the Respondent is a patient of mental disorder. According to him, she was even suffering from said ailment even prior to her marriage and for that purpose she had taken medical treatment of Dr. Watve (Exh.101) at Pune. The Petitioner has examined Dr.Watve. However, he has stated that in the year 1984-85 when he was attached to N.M.Wadia Hospital, Pune he had treated the Respondent and diagnosed that she was a patient of bi-polar mood

disorder. According to him he had even prescribed medicines for the same. However, he has not stated as to what medicines were prescribed by him. What is more to be noted is that he has not produced even a single document to show that Respondent was examined by him and he had carried out a particular test and reached to a particular conclusion. It was in fact very easy for the Petitioner as well as for the said witness to produce documentary evidence about the same but we find that for the reasons best known to them, both of them have not produced any document to establish their case. An attempt was made on behalf of Dr. Watve to show that he tried to get the case papers from N.M.Wadia Hospital but he came to know that such papers are not available and the same were destroyed after a particular period. For this also he has not produced any letter from N.M.Wadia Hospital. Proper course would have been to issue witness summons for production of documents to N.M.Wadia Hospital Pune and to call upon them to produce the record in respect of Respondent. But no such attempt has been made. On the contrary Dr.Watve has stated that in the Court he came to know that record in respect of Respondent has been destroyed by the Hospital. He has not stated the name of the person from whom he received the said information. Though initially he stated that Respondent also took treatment in Sasoon Hospital, in cross examination he admitted that there is no material with him to show that Respondent has in fact taken

treatment in the Sasoon Hospital in the year 1984-85. We cannot ignore the fact that his evidence has been recorded in the year 1999. Admittedly when he was attached to N.M.Wadia Hospital and other hospital he used to examine several patients. There is nothing on record to show that the said witness had any special reason to remember the case of respondent in detail. He has not even stated on how many occasions he had examined the Respondent. When such is the position how one can expect that after a period of about 15 years the said doctor is in a position to remember the exact diagnosis or the treatment given by him to the Respondent. What is to be more to be noted is, Dr.Watve has clearly admitted in his cross examination that he cannot state whether the Respondent was incurably of unsound mind and whether at present she is suffering from the said decease. When such is the state of affair how one can say that the evidence of doctor Watve is sufficient to hold that Respondent was suffering from incurable mental disorder as contemplated under Section 13(1)(iii) of the Hindu Marriage Act. It is pertinent to note that Dr.Watve has not even stated as to what signs and symptoms of mental disorder were noticed by him when he examined the Respondent. So, the learned trial Judge has rightly disbelieved the evidence of Dr.Watve.

17. An attempt has been made on behalf of the Petitioner to show that the Respondent used to become violent

whenever she used to get attack of mental disorder. According to him once she had even broken the cassette, diary, and damaged T.V., refrigerator etc. Firstly, it must be noted that for all this, besides the bear interested word of the Petitioner there is no other evidence. If really the Respondent was a patient of mental disorder and was under treatment for long time then certainly the Petitioner could have very well even produced the medical prescription and bills in that behalf. But that has also not happened. Besides this even if we assume for the sake of argument that Respondent was suffering continuously or intermittently from mental disorder still then that by itself is not sufficient to grant divorce under Section 13(1)(iii) of Hindu Marriage Act, 1955. What is necessary in such case is that the Petitioner must prove that mental disorder of the spouse was of such kind and extent that as a result of the same the Petitioner cannot reasonably be expected to live with the Respondent. Naturally, the Petitioner has to prove the degree of such alleged mental disorder of the Respondent. In the instant case there is no sufficient evidence either oral or circumstantial to show that the Respondent was having continues or intermittent mental disorder of such nature and extent as a result of which it had become impossible for the Petitioner to live with her. It is pertinent to note that though the Petitioner’s own witness Col.Radhakrishnan has stated that according to him it was necessary to give some

physiological treatment to Respondent he himself has not given any details and has not stated as to on what basis he felt accordingly. Besides this even if we accept the evidence of Col. Radhakrishnan as it is still then that would not clearly bring the case under Section 13(1)(iii) of Hindu Marriage Act.

18. It was tried to be argued on behalf of the Petitioner that the Respondent was even admitted at Sicunderabad Hospital and once run away from the house and subsequently she was found at a particular place and then she was taken to hospital. Here again we find that the Petitioner has not adduced any documentary evidence in this behalf. It was in fact very easy for him to produce the necessary document from Cantonment Hospital at Sicunderabad and to get it proved but for the reasons best known to him, the Petitioner has not done so. Naturally mere statement of Col.Radhakrishnan or the Petitioner wherein they say that Respondent had left the house and she was admitted in hospital is not sufficient. On the contrary we find that thereafter her delivery took place and she gave birth to a son. There is nothing on record to show that she did not take proper care of her son. On the contrary the Petitioner has also admitted in his cross examination that the son was looked after by the Respondent.

19. The learned Advocate for the Petitioner strenuously

argued before us that the Respondent was even admitted in Sasoon Hospital, Pune during the pendency of the Marriage Petition and from that evidence also it should be held respondent was suffering from mental disorder and is incurably of unsound mind. It does appear that Petitioner had called certain documents (case papers) from the Sasoon Hospital and an the same were produced. However, it must be noted that mere production of the copies of the original papers is not sufficient to admit the said papers in evidence unless the same are duly proved. It is not even the case of the Petitioner that those documents or case papers have been admitted by the Respondent. On the contrary they have categorically denied the same. Under such circumstances, it was absolutely essential for the Petitioner either to examine the concerned doctor from Sasoon Hospital or atleast some authorised person to prove the contents and hand writing of the said case paper. But that has not been done by the Petitioner. What is more to be noted is that even at the appellate stage also at no point of time it is even submitted by the learned Advocate for the Petitioner that opportunity be given to him to lead additional evidence. Under the circumstances, it must be presumed that whatever documents that were called by the Petitioner from Sasoon Hospital might not be supporting the Petitioner’s case and that is why the Petitioner did not insist to take steps for getting the said documents proved and admitted in evidence. So, we are of the

considered opinion that the Petitioner has failed to prove the essential ingredients of Section 13(1)(iii) of Hindu Marriage Act, 1955 and his case in this behalf has been rightly rejected by the trial Court.

19. The learned Advocate for the Petitioner argued before us that in her written statement the Respondent wife has made false and baseless allegation that the Petitioner husband used to remain under influence of alcohol about 14-15 hours a day. He submitted that when admittedly the Petitioner was serving in Military and attending his duty it must be held that the allegations made by the Respondent are false. According to him as a result of the said wild allegation, Petitioner not only suffered mental agony but he was also not promoted. It is true that if Respondent wife has not given any specific date or dates regarding the allegation about consuming alcohol by the Petitioner. However, at the same time it must be noted that it is not even the petitioner's case that he never consumes alcohol. It is Respondent's case that Petitioner often used to consume liquor and in that state of drunken condition he used to harass her and ill-treat her. So, there is word against word. Under such circumstance it cannot be said that the allegations made by the Respondent in her written statement was totally false or baseless. She might have made some exaggeration in her written statement while meeting out the allegations of Petitioner, but that

itself would not amount to cruelty as contemplated under Section 13(1)(ia) of Hindu Marriage Act.

20. Shri Ajit Kulkarni, learned Advocate for the Petitioner vehemently argued before us that in the instant case the wife has written one letter (Exh.69) dated 25-11-1988 to Capt Sanjiv Kapoor, colleague of her husband, expressing therein her love about him and asking him whether he would marry with her, so, that she would give divorce to the Petitioner. He, therefore, submitted that writing such letter during subsistence of her marriage with Petitioner itself amounts to an act of cruelty which can be said to be sufficient for the husband to refuse to stay with Respondent. It is needless to say that if during subsistence of a valid legal marriage wife writes letter to other person expressing therein that she loves him and ask whether he would be ready to marry with her, the same is bound to cause great mental torture and agony to the husband. However, in the instant case it is necessary to find out whether the allegations made by the Petitioner husband in this behalf are duly proved by him. It must be noted that Respondent has categorically denied to have written any such letter to Capt.Kapoor. She has in fact stated that she never met him and she is not aware whether there is any such colleague of the Petitioner.

21. While considering this letter it is first necessary

to find out whether the said letter or document has come from proper custody and whether it is duly proved and admitted in evidence. The Petitioner has stated that this letter was handed over to him by Capt. Sanjiv Kapoor. However, besides his bare word, there is nothing on record to show that said letter was handed over by Capt.Kapoor to him. It must also be noted that normally, if really there would have been love affair between Respondent and Capt.Kapoor then he would not have handed over the said letter to petitioner and would not have even disclosed about the contents of the said letter to the Petitioner. Even in that letter also the Respondent had specifically stated that the contents of the said letters are written as confidential matter. The Petitioner has also produced at exh.70 one letter alleged to have been written by Capt.Kapoor to the Petitioner. It is dated 29-1-1989. The Petitioner has stated that as Capt.Kapoor was working with him at various places he is conversant with his hand writing and signature and as such he has stated that the said letter is written by Capt.Kapoor. However, it must be noted that both the above mentioned letters are on separate papers and not on inland letters. So, normally they must have been sent in an envelope, but unfortunately the envelopes of the above mentioned two letters have not been produced by the Petitioner. The Petitioner has also stated that Exh.69 letter is in hand writing of the Respondent. When she was confronted with the said letter in her cross

examination she replied "I do not remember whether the said letter is in my hand writing". It is needless to say that this answer is not happy and satisfactory. Now one can say that he does not remember whether the said hand writing is her or not, either she should have answered in affirmative or in the negative. But it seems that learned Advocate for the Petitioner as well as the Court did not insist for giving proper rational answer to the question put by the Petitioner Advocate. It is true that a suggestion has been put to the Petitioner in his cross examination that above mentioned letter Exh.69 dated 25-12-1988 was got executed by the Petitioner forcibly from the Respondent. The same is of course denied by the petitioner. So, under such circumstances it was in fact necessary to have clear evidence on the said point. In order to prove the handwriting and signature of the said letter the Petitioner could have requested the Court to send the said letter along with admitted hand writing of the Respondent to the hand writing expert. But that has also not happened. Under the circumstances learned trial Judge held that the said letter is not duly proved and did not accept the same. The Petitioner ought to have adduced cogent and convincing evidence to show that the said letter Exh.69 was written by the Respondent. What is more to be noted is that when according to the Petitioner Capt.Kapoor had given the said letter to him, it was in fact very easy for the Petitioner to examine Capt.Kapoor However, Capt.

Kapoor is not examined by the Petitioner on the ground that at the relevant time he was posted at the border and as such it was difficult to secure his presence. Had it been so, the Petitioner could have moved the Court for appointment of the Commissioner for recording the evidence of Capt Kapoor. But that has also not happened. In fact, besides the bear word of the Petitioner there is no evidence to show that Capt.Kapoor was posted at boarder at the relevant time.

22. Assuming for the sake of argument that such letter was written by Respondent to Capt.Kapoor still then that by itself under facts and circumstances of the present case would not be sufficient to jump to the conclusion that the said letter is sufficient to grant a decree for divorce. It is pertinent to note that even according to the Petitioner he came to know about the said letter Exh.69 when Capt.Kapoor informed him and subsequently wrote a letter in that behalf to him. The said letter is dated 29-1-1989. What is interesting to be noted is that in the marriage Petition filed on 9-9-1991 the Petitioner has nowhere even referred the above mentioned incident or letter. If really the Petitioner had come to know about such letter in 1989 and according to him it was sufficient to grant divorce or that it was of such nature that it had caused great mental agony to him he would have certainly referred the said letter in his petition filed on 9-9-1991. We must note that it is only after a

period of about 7 years from filing of the petition the petitioner sought amendment and took this ground for divorce. So, this conduct of the Petitioner under the circumstances also creates some doubt about the truthfulness of the allegations made by the Petitioner in this behalf.

23. There is another aspect of the matter, it is an admitted fact that even after 29-1-1989 i.e. the time when Petitioner came to know about the letter Exh.69 he continued to have cohabitation and conjugal relations with Respondent. Not only that but even thereafter they had lived together happily at various places and when they were at Sicunderabad the Respondent gave birth to a male child on 29-3-1991. Considering this conduct of the Petitioner also one may say that the alleged act of the Respondent was in fact condoned by the Petitioner and he had put an end to that matter. So, having regard to all these facts and circumstances and the conduct of the parties we do not think that letter Exh.69 dated 25-12-1988 is sufficient to grant a decree of divorce on the ground of Section 13(i)(ia).

24. The Petitioner has claimed divorce also on the ground of desertion. According to him, Respondent left him on 28-6-1991. The Petition is filed on 9-9-1991. When such is the position it is clear that statutory period of 2 years contemplated under Section 13(1)(ib)

was not completed and as such ground of desertion was in fact not available to the Petitioner when petition for divorce was filed on 9-9-1991. There are various letters written by the Respondent to the Petitioner at Exhs. 134, 135 and 136 and even thereafter wherein the Respondent had requested the Petitioner that he should take her at his place of posting and that she is ready to cohabit with the Petitioner. So, there is nothing on record to indicate that the Respondent had an intention to put an end to marital tie between Petitioner and Respondent. So, it is crystal clear that the Petitioner has miserably failed to prove that Respondent has deserted him for a continues period of not less than 2 years immediately preceding presentation of the petition.

25. In view of the above discussion we are of the considered view that the Petitioner has failed to make out a case for divorce as contemplated under Section 13(1)(ia) i.e. cruelty or Section 13(1)(ib) i.e. desertion or under Section 13(1)(iii) i.e. the Respondent is incurably of sound mind or that she is suffering from mental disorder of such a kind and to such an extent that Petitioner cannot reasonably be expected to live with the Respondent. The judgment and order passed by the learned trial Judge is legal and correct. There is no necessity to interfere with the same.

26. It must be noted that the Respondent wife has filed

Cross Objections and claimed that lower court ought to have granted maintenance at the rate of Rs.10,000/- per month. However, it must be noted that admittedly, presently Respondent is getting 27.5% of the salary of the Petitioner as maintenance as per Rule and Order passed under Army Act. Then it must also be noted that Respondent has not filed any separate application for permanent alimony. When we are not disturbing the marital status of respondent wife by passing a decree for divorce against her, we are not inclined to allow the Cross Objections. Hence we pass the following order :

27. The appeal is dismissed.

. The Cross Objections are disposed of. If Respondent-wife desires to claim maintenance she may file proper application before appropriate forum.

. Appellant to pay to the Respondent Rs.5,000/- (Rupees five thousand) as the cost of this appeal.

(S.R.SATHE,J.) (S.B.MHASE, J.)